

MONTANA LEGISLATIVE HISTORY

BEST COPY
AVAILABLE

Chapter 304 19 95

Bill H _____ S 298

Original bill & history ☒ c

H. Committee on Bus. Labor

Hearing Date(s) _____ c

_____ c

3/14 ☒ c

_____ c

Date Out 3/14 ☒ c

S. Committee on Bus. Industry

Hearing Date(s) _____ c

2/10 _____ c

_____ c

_____ c

2/13 ☒

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

2/03	FISCAL NOTE REQUESTED		
2/07	FISCAL NOTE RECEIVED		
2/07	FISCAL NOTE PRINTED		
2/09	HEARING		
2/09	COMMITTEE REPORT—BILL PASSED		
2/10	2ND READING PASSED	42	7
2/11	3RD READING PASSED	37	11
	TRANSMITTED TO HOUSE		
2/11	FIRST READING		
2/15	REFERRED TO JUDICIARY		
3/08	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED		
3/25	2ND READING CONCURRED	74	24
3/27	3RD READING CONCURRED	77	21
	RETURNED TO SENATE		
4/06	SIGNED BY PRESIDENT		
4/06	SIGNED BY SPEAKER		
4/07	TRANSMITTED TO GOVERNOR		
4/12	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 393		
	EFFECTIVE DATE: 10/01/95		

SB 298 INTRODUCED BY VAN VALKENBURG, ET AL.

PROVIDE FOR A SERVICE CHARGE UPON THE DISHONOR OR STOP
PAYMENT OF A CHECK, DRAFT, OR ORDER FOR PAYMENT

2/02	INTRODUCED		
2/02	FIRST READING		
2/02	REFERRED TO BUSINESS & INDUSTRY		
2/10	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/15	2ND READING PASSED	49	1
2/16	3RD READING PASSED	49	1
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO BUSINESS & LABOR		
3/14	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED		
3/24	2ND READING CONCURRED	75	23
3/25	3RD READING CONCURRED	75	23
	RETURNED TO SENATE		
3/28	SIGNED BY PRESIDENT		
3/28	SIGNED BY SPEAKER		
3/28	TRANSMITTED TO GOVERNOR		
3/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 304		
	EFFECTIVE DATE: 10/01/95		

SB 299 INTRODUCED BY BECK, ET AL.

PROVIDE A PROCEDURE FOR TERMINATING LOCAL WATER QUALITY
DISTRICTS OR JOINT LOCAL WATER QUALITY DISTRICTS

2/02	INTRODUCED		
2/02	FIRST READING		
2/02	REFERRED TO LOCAL GOVERNMENT		
2/16	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	50	0
2/21	3RD READING PASSED	49	1

SENATE BILL NO. 298

INTRODUCED BY

Benedict

Van Valkenburg *M. A. Larson* *Larson*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A SERVICE CHARGE UPON THE DISHONOR OR STOP PAYMENT OF A CHECK, DRAFT, OR ORDER FOR PAYMENT; AND AMENDING SECTION 27-1-717, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-717, MCA, is amended to read:

"27-1-717. Issuing a bad check or stopping payment -- civil liability. (1) A person who issues a check, draft, or ~~an~~ order for the payment of money is liable for a service charge, as provided in subsection (2), or for damages in a civil action, as provided in subsection (2) (3), to the person payee to whom the check, draft, or order is issued, or the payee's assignee, if the check, draft, or order is:

(a) dishonored for lack of funds or credit or because the issuer has no account with the drawee;
or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) Except as provided in subsection (7), the person who issues the check, draft, or order is liable to the payee or the payee's assignee for a service charge in an amount not greater than \$15. The payee or the payee's assignee may waive the service charge. Demand for the service charge must be made in writing by the payee or the payee's assignee and mailed to the address shown on the check, draft, or order or to the issuer's last-known address. The demand must state that the issuer has a period of 10 calendar days from the date of the written demand to pay the value of the check, draft, or order and must state the service charge provided for in this section.

(3) The amount of damages awarded pursuant to subsection (1) must be an amount equal to the sum of \$15 plus the greater of \$100 or three times the amount for which the check, draft, or order was issued. However, damages may not exceed the value of the check, draft, or order by more than \$500.

~~(3)(4)~~ The remedy provided by ~~this section~~ subsection (3) is available only if:

(a) ~~the person to whom the check, draft, or order was issued~~ payee or the payee's assignee has made the written demand, ~~mailed to the last known address or the address shown on the check, to the drawer for payment of the amount of the check, draft, or order~~ required in subsection (2) not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded under subsection (2) prior to the commencement of the action.

~~(4)(5)~~ The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the obligation of the ~~drawer~~ issuer provided for in 30-3-423 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply.

(6) Upon introduction by the payee or the payee's assignee of evidence sufficient to establish the fact of mailing as required under subsection (2), the failure to receive the written demand is not a defense to the action allowed under subsection (3).

(7) The limit on the service charge provided for in subsection (2) increases by \$1 each calendar year beginning October 1, 1995, but the service charge may not exceed \$25 without further action by the legislature."

-END-

SENATE BUSINESS & INDUSTRY

Page 7

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

SB0290	TVEIT, LARRY	2/02	2/15	REVISE DISCRIMINATION BASED ON SEX OR MARITAL STATUS FOR INSURANCE	PASS AS AMENDED	2/16	VOTE: 6-3		2/16
✓ SB0298	VAN VALKENBURG, FRED	2/02	2/10	ESTABLISH A SERVICE CHARGE FOR BAD CHECKS	PASS AS AMENDED	2/13	VOTE: UNAN		2/14
SB0302	JABS, REINY	2/03	2/10	CLARIFY TERRITORIAL INTEGRITY FOR ELECTRICAL SUPPLIERS RE: SERVICE AREAS	DO PASS	2/10	VOTE: UNAN		2/10
SB0311	WELDON, JEFF	2/06	2/13	REVISE ONE-STOP BUSINESS LICENSING PROCEDURES; ESTABLISH A BOARD OF REVIEW	PASS AS AMENDED	2/16	VOTE: UNAN		2/16
SB0313	MESAROS, KEN	2/06	2/14	PROVIDE EQUAL ACCESS TO PHARMACEUTICAL MANUFACTURER'S DISCOUNTS	PASS AS AMENDED	2/16	VOTE: 7-2	BUSINESS & LABOR	2/16
SB0313	MESAROS, KEN	2/20	3/02	PROVIDE EQUAL ACCESS TO PHARMACEUTICAL MANUFACTURER'S DISCOUNTS	DO PASS	3/02	VOTE: 6-2		3/03
SB0317	BENEDICT, STEVE	2/07	2/13	AMEND DEFINITION EXCLUDING ATTY'S & ACCOUNTANTS AS BEING INVESTMENT ADVISER	DO PASS	2/13	VOTE: 7-1		2/14
SB0320	FRANKLIN, EVE	2/09	2/16	REVISE NURSE PRACTICE ACT	TABLED ON	02/16	VOTE: UNAN		
SB0322	JACOBSON, JUDY	2/07	2/14	PROHIBIT WAITING PERIOD FOR PREEXISTING CONDITION UNDER CERTAIN CONDITIONS	PASS AS AMENDED	2/16	VOTE: 7-2		2/16
SB0325	GAGE, DELWYN	2/08		CLARIFY CERTAIN CAPITAL COMPANY INVESTMENTS STATUS			VOTE:	TAXATION	
SB0326	KLAMPE, TERRY	2/08	2/15	ALLOW INSURED THE OPTION OF DIRECTING INSURANCE PAYMENTS TO HEALTH PROVIDER	DO PASS	2/16	VOTE: 5-4		2/16
SB0327	KLAMPE, TERRY	2/09	2/16	REVISE CHIROPRACTIC LICENSURE	DO PASS	2/16	VOTE: UNAN		2/16

about half the video gaming machines in Montana and placed them in bars and taverns.

SEN. FORRESTER asked if a managed care system would be used, or would the fee be set low enough in order to treat the maximum number of people. Ms. Boles said it would be a managed care approach, and her interpretation of SB 260 was the department would inspect who was willing to do it for less money and report to the legislature on the mechanism for awarding grants. Ms. Boles related there was a national connection which certified counselors after 60 hours of training. She informed the committee SB 260 showed a relationship between their priorities and legislative sanction.

SEN. FORRESTER asked how many compulsive gamblers could be treated the first year, and how long it would take to build the fund to the maximum. Ms. Boles said there probably would not be any distribution the first year. SEN. PIPINICH said because the fund was a trust, the \$400,000 would first be built up and then the interest would be spent. He agreed with Ms. Boles there probably wouldn't be anything paid from the fund the first year.

SEN. SPRAGUE asked if all addiction was similar. Larry Akey said evidence showed gambling addiction to be worse than other kinds, and needed to be treated differently from other addictions. He said all compulsive behavior disorders were lumped together as a type of mental illness, which was a common thread in addictions.

SEN. SPRAGUE asked if getting started wouldn't ensure having a plan for the 1997 legislature. Mr. Akey said it would, to the extent the legislature wanted to create a slush fund from which no expenditures could be made until the program was well-designed. He said he would rather see a program designed and the \$400,000 spent directly on treatment on an annual basis, instead of putting it into a trust account from which only the interest could be spent.

Closing by Sponsor:

SEN. PIPINICH reminded the committee if there wasn't a start, the program would never go anywhere. He admitted he didn't have all the answers, but SB 260 was a start which could be developed along the way. He urged DO PASS for SB 260.

HEARING ON SB 298

Opening Statement by Sponsor:

SEN. FRED VAN VALKENBURG, SD 32, Missoula, said SB 298 would authorize charging a service charge on a bad check, which was something merchants were not authorized to currently charge. He reported SB 298 set the bad check fee at \$15, which was close to

the average charge across the state. He maintained page 2, subsection 7, lines 17-19, allowed merchants to raise the \$1 per calendar year, beginning a year after the effective date of the bill, up to \$25. SEN. VAN VALKENBURG explained SB 298 provided for notice to be sent by regular mail to the party who wrote the bad check.

SEN. VAN VALKENBURG said there may not be consensus among the committee regarding the fee; however, he stressed the fact he and others who sponsored the bill would be willing to work with the members on that issue. He asserted the need was for a legal basis to be in place to collect the fee.

Proponents' Testimony:

Jeff Koch, Collection Bureau Services, Missoula, said about half the states had specific language addressing the situation, and the fees ranged from \$10-\$25. He expressed merchants needed protection because their own banks charged them a fee for depositing a NSF check. Mr. Koch stated merchants needed to recoup the costs and consumers needed some protection; currently, with no law, check collection agencies were able to charge an arbitrary fee and in some cases, put the checkwriter's name on the black list. He maintained if the checkwriter's refused to pay the service fee, they could find themselves unable to write checks at any Montana location.

{Tape: 1; Side: B}

Mr. Koch urged support for SB 298.

Dan McLean, Credit Bureau of Missoula, Inc., said he rose in support of SB 298, but said he would like to see the fee limit change from \$15 to a reasonable fee. Mr. McLean stated he would be happy to work with SEN. VAN VALKENBURG in drafting an amendment. He reported setting the fee at a certain price would require legislative action to change. He admitted the definition of "reasonable fee" would have to be established, and the merchants and collection agencies could work together on that. He declared he was of the opinion \$20 was not an unreasonable fee; in any case, he supported SB 298.

Sarah McQueen, Check-Rite, Bozeman, distributed copies of her testimony, EXHIBIT #4, her proposed amendments, EXHIBIT #5, and read her written testimony. She referred the committee to Page 3, Number 2, of her written testimony and said she supported much of SB 298, except the 10 days to send a demand letter and not give the individual 30 days to dispute the debt seemed to be in violation of the Fair Debt Collection Practices Act. Ms. McQueen said Check-Rite protected the merchants, and their fee was \$22. She said other collection agencies in Montana pursued civil action the 10th day, which was what her agency saw problems with, because protecting the merchants was very important. Ms. McQueen explained if a customer wrote a bad check and immediately got a

notice, they would be able to pay the check at Check-Rite; in contrast, they could write a bad check inadvertently, leave town and then have a civil suit filed against them the 10th day. She asked the committee to consider her amendments.

Jean Hanich, Check-Rite, Helena & Billings, stated she agreed with Sarah McQueen's testimony, explaining she had been in her office 18 years and had seen the service fee go from \$5 to \$20. She said it was her opinion the marketplace would dictate what a reasonable fee was, and a \$15 fee was going backwards; the ultimate result would be a flooding of courts with unnecessary litigation. She reminded the committee her agency worked for the merchant, but was not against the general public. Ms. Hanich expressed support for SB 298 with the amendments Ms. McQueen referred to in her testimony.

Opponents' Testimony:

Charles Brooks, Montana Food Distributors Association, said when he sold his retail business, they wrote off over \$15,000 in bad checks. He declared he believed in free enterprise for both products and services; however, SB 298 allowed the legislature to fix prices. He suggested using "reasonable" instead of stating a specific fee; he thought the legislature should not be setting prices and fees. Mr. Brooks opined consumers already had enough protection and the competition among agencies handling check collection would set a fair and reasonable price. Mr. Brooks urged DO NOT PASS for SB 298, but would agree to an amendment which would say "reasonable fee."

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked if people involved in credit reporting and check collection had an association. Sarah McQueen said they did -- National Collectors Association and Montana Collectors Association.

SEN. BENEDICT asked if they discussed the above issue to bring to the consensus. Ms. McQueen replied they had been working with other collection agencies and were looking forward to strengthening that relationship.

SEN. BENEDICT questioned why the 1993 testimony did not include the comments heard today. He wondered why the issue had not been discussed among collection agencies between 1993 and now, so as to have a consensus. Ms. Hanich explained the American Collectors Association (ACA) was a group directed more toward collection agencies than check collection offices. She informed the committee her agency was a member primarily because of the Errors and Omissions Insurance, which was through American Collectors Association.

SEN. BENEDICT maintained he was referring specifically to the Montana agencies. Jean Hanich contended the Montana organization

was directed toward collection agencies, rather than stand-alone check collection places; in Montana, the organization had never been particularly strong.

SEN. BENEDICT repeated his question by commenting there wasn't this opposition to the bill in 1993; why hadn't the collection agencies and check collection businesses gotten together to determine the needs. Jeff Koch related they had and the consensus was to support SB 298 if it allowed a service fee of a reasonable nature, and \$15 was what was discussed. Mr. Koch told the committee they had talked to SEN. VAN VALKENBURG who said it would be better to support an amended SB 298 than draw up a second bill; for that reason only, he represented the association to support SB 298.

SEN. EMERSON wondered if SB 298 was necessary, since the Fair Debt Collection Practices was in place. Ms. McQueen contended SB 298 was necessary in order to get the language of the service charge in statute so check collection agencies were not in the gray area.

SEN. BENEDICT asked if the vagueness of "reasonable service charge" would be more of an attorney's bonanza, than a specifically stated service charge. Daniel McLean answered that he didn't see it as beneficial to attorneys because of the time involved in the processing and going to court; the less attorneys were involved in the collection process, the better off all involved would be.

SEN. BENEDICT said he thought "reasonable cost" would open opportunity for private action, because of the vagueness. Mr. McLean stated it was possible; however, he believed it was overridden by price-fixing. He stated other kinds of statutes said "reasonable attorney's fees", which seemed to be working well.

SEN. JOHN HERTEL asked if collection agencies had the flexibility to charge whatever fee they wanted. Mr. McLean said he thought so, but SB 298 gave authority to charge a fee. He informed the committee a bad check was a different matter from a debt, explaining he wasn't sure the Collections Act applied to bad checks.

Closing by Sponsor:

SEN. VAN VALKENBURG stated he agreed with Mr. McLean when he said bad checks and debt were not equivalent terms, and he doubted the Fair Debt Collection Act equated debt with bad checks.

SEN. VAN VALKENBURG said he wanted SB 298 to pass, and if it could be accomplished through raising the fee to \$22, he was in favor of the fee change. He related it was his opinion the bill would be harder to pass if the language was "reasonable fee";

although, he could understand the intent. He announced \$15 was in the bill as an answer to "the economy won't bear anymore".

SEN. VAN VALKENBURG said there currently was no legal authority to collect any fee, though agencies were doing so because the consumers generally felt the \$10 or \$15 wasn't worth fighting over; however, there was opportunity for lawsuits. He reminded the committee the authority should be in statute because merchants paid banks for the cost of bad checks and had no way of recovering the expense.

HEARING ON COMMITTEE BILL PROPOSAL

Opening Statement by Sponsor:

SEN. DELWYN GAGE, SD 43, Cut Bank, said Montana statute currently covered an organization, Pacific Northwest Economic Region, whose members were Montana, Idaho, Washington, Oregon, Alaska, British Columbia and Alberta. He said it was started in 1989, was composed of legislators and Canadian legislative counterparts (4 from each state or province) and its' purpose was to promote the region world-wide. SEN. GAGE informed the committee the membership had been expanded to include each governor or premier; the purpose of this bill was to give permission for the Governor to serve on the Pacific Northwest Economic Region Committee.

Proponents' Testimony: None.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. FORRESTER asked who would pay the Governor's expenses. SEN. GAGE said it would come from his budget or he would have to find other funding for it.

SEN. FORRESTER asked if, after this legislative session, the funding would be in place for the Pacific Northwest Economic Region Conference. SEN. GAGE said he was not sure, but he would like to have the mechanism available, in the event the Governor would like to take part.

EXECUTIVE ACTION ON COMMITTEE BILL PROPOSAL

Motion/Vote: SEN. STEVE BENEDICT MOVED TO ALLOW A COMMITTEE BILL. The motion CARRIED UNANIMOUSLY by voice vote.

{Tape: 2; Side: A}

procedure, he or she could challenge the legality of the whole process the first time the warrant was served.

SEN. SPRAGUE said he had stated he would not vote; however, he checked with leadership and the law basically read if a person would personally benefit from the action, the legislator must abstain from voting. SEN. SPRAGUE further explained if a person belonged to an organization which mutually advantaged one way or the other, the voter should not abstain. Therefore, he opined he should not abstain.

Motion/Vote: SEN. KEN MILLER MOVED TO ADOPT THE AMENDMENTS ON SB 246. The motion PASSED UNANIMOUSLY by voice vote.

Motion/Vote: SEN. TERRY KLAMPE MOVED DO PASS SB 246 AS AMENDED. The motion PASSED 7-1 on roll call vote (#1).

EXECUTIVE ACTION ON SENATE BILL 253

Bart Campbell distributed three sets of amendments (sb025301.agp, sb025302.agp, sb025303.agp) and explained they all worked together.

Motion/Vote: SEN. WILLIAM CRISMORE MOVED TO ADOPT AMENDMENTS sb025301.agp, EXHIBIT #12. The motion CARRIED UNANIMOUSLY by voice vote.

Motion/Vote: SEN. MIKE SPRAGUE MOVED TO ADOPT AMENDMENTS sb025302.agp and sb025303.agp, EXHIBITS #13 & #14. The motion CARRIED UNANIMOUSLY by voice vote

Motion: SEN. WILLIAM CRISMORE MOVED DO PASS SB 253 AS AMENDED.

Discussion: SEN. KLAMPE said SB 253 would be a nice perk for an insurance company, but would not reduce premiums. He opined insurance companies should participate in savings they garnered if SB 253 passed.

Vote: Motion DO PASS SB 253 AS AMENDED CARRIED 6-2 by voice vote, with SEN. KLAMPE and SEN. WILSON voting "NO".

EXECUTIVE ACTION ON SENATE BILL 298

Motion: SEN. GARY FORRESTER MOVED TO ADOPT AMENDMENTS sb029801.agp, EXHIBIT #15.

Discussion: Bart Campbell explained the amendments increased the amount from \$15 to \$30.

SEN. SPRAGUE asked for an explanation of Page 1, Line 28, saying "the service charge" was a generic term but Page 1, Line 21, kept the amount specific. Charles Brooks said a reasonable fee was to be one of the criteria because for the first time, the specific fee would be in code for the recovery of the check, i.e. the industry was being regulated. Therefore, "not to exceed \$30" was used in order to give flexibility.

SEN. SPRAGUE asked if the fee could ever exceed \$30, regardless of the size of the check. Mr. Brooks said it could not.

{Tape: 2; Side: B;}

SEN. SPRAGUE commented if the fee was \$30, the whole industry would be encouraged to raise their fees. He asked if the industry would have a problem with keeping it at the current fee. Charles Brooks said the people he represented would like to see it remain "reasonable fee" with no numbers, explaining the above-mentioned fees was a highly competitive field; the marketplace would force the rates to be at a certain level.

Vote: Motion TO ADOPT AMENDMENTS sb029801.agp PASSED UNANIMOUSLY by voice vote.

Motion: SEN. BILL WILSON MOVED DO PASS SB 298 AS AMENDED.

Discussion: SEN. SPRAGUE commented he supported SB 298 AS AMENDED because the damages were punitive.

Vote: Motion DO PASS SB 298 AS AMENDED PASSED UNANIMOUSLY by voice vote.

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE -----

-- REREFERRED ---- DATE READ

SB0287	HERTEL, JOHN		AUTHORIZE LABOR TO ADOPT RULE ALLOWING WAIVER OF SAFETY COMMITTEE					
	2/20		CONCUR	3/10	VOTE: 18-0			3/10
SB0298	VAN VALKENBURG, FRED		ESTABLISH A SERVICE CHARGE FOR BAD CHECKS					
	2/20	3/14	CONCUR	3/14	VOTE: 18-0			3/16
SB0302	JABS, REINY		CLARIFY TERRITORIAL INTEGRITY FOR ELECTRICAL SUPPLIERS RE: SERVICE AREAS					
	2/15		CONCUR	3/2	VOTE: 18-0			3/04
SB0307	HARDING, ETHEL		REVISE ACUPUNCTURE LAW					
	2/22	3/15	CONCUR AS AMENDED	3/15	VOTE: 18-0			3/16
SB0311	WELDON, JEFF		REVISE ONE-STOP BUSINESS LICENSING PROCEDURES; ESTABLISH A BOARD OF REVIEW					
	2/22	3/14	CONCUR AS AMENDED	3/14	VOTE: 18-0			3/16
SB0313	MESAROS, KEN		PROVIDE EQUAL ACCESS TO PHARMACEUTICAL MANUFACTURER'S DISCOUNTS					
	3/09	3/20	CONCUR AS AMENDED	3/21	VOTE: 13-5			3/22
SB0317	BENEDICT, STEVE		AMEND DEFINITION EXCLUDING ATTY'S & ACCOUNTANTS AS BEING INVESTMENT ADVISER					
	2/20	3/09	CONCUR	3/9	VOTE: 18-0			3/09
SB0327	KLAMPE, TERRY		REVISE CHIROPRACTIC LICENSURE					
	2/20	3/01	CONCUR	3/1	VOTE: 14-4			3/02
SB0329	WATERMAN, MIGNON		REVISE LONG-TERM HEALTH CARE INSURANCE PROVISIONS					
	2/20	3/08	CONCUR	3/8	VOTE: 18-0			3/08
SB0335	MILLER, KEN		REVISE RETAIL INSTALLMENT SALES					
	2/20	3/08	DUPLICATE	CONCUR	3/8	VOTE: 13-5	BUSINESS & LABOR	3/08
SB0335	MILLER, KEN		REVISE RETAIL INSTALLMENT SALES					
	3/11		CONCUR AS AMENDED	3/14	VOTE: 15-3			3/16
	VAN VALKENBURG, FRED		EMPLOYER NOTICE OF THEFT FROM EMPLOYER BY PROBATIONER OR PAROLEE					

HEARING ON SB 298Opening Statement by Sponsor:

SEN. FRED R. VAN VALKENBURG, SD 32, Missoula County, said this bill is an act providing for a service charge upon the dishonor or stop payment of a check, draft, or order for payment.

Proponents' Testimony:

Jeff Koch said he supports this bill. The legislative climate is such that merchants are in a vacuum with regards to adding a service fee. Approximately half of the states have statutory codes regarding a service charge on checks which are returned. There are two reasons for creating a statute. Merchants do indeed have a right to recover the un-anticipated costs they incur when they un-wittingly accept a check that returns from the bank. Many banks are already charging their own customers from \$1 to \$10 for each check returned on deposit by the merchant even though the merchant is the victim. Merchants need to recoup these costs. At this time the merchant has no protection and there have been at least two lawsuits filed against Montana merchants who have charged such a fee; those lawsuits were based on the state's lack of such a statute. Consumers also deserve some protection from erratic service charges. This bill will set a uniform fee because it will leave citizens with no doubt as to the potential penalty they may face for leaving a merchant with a bad check. Provision is clearly stated that at the merchant's or assignee's discretion, the fee may be waived. He then supplied an article from a newspaper regarding this matter. **EXHIBIT 3**

Dan McLean, Credit Bureau of Missoula, said they support this bill. This bill is necessary because of lawsuits.

Brad Griffin, Montana Retail Association, said they support this bill.

Charles Brooks, Montana Food Distribution Association, said they concur with the remarks already made on this bill and they offer their support of the bill. He also said the company which he had liquidated recently wrote off \$15,000 worth of checks which could not be collected upon.

Mike McQueen said he supported the bill.

Kevin Loftis, Manager, Credit Bureau of Havre and President, Montana State Collectors Association, said they support this bill.

Pat O'Malley, Owner, Clear Check of Montana, said they support his bill.

Darrell Micklewright, Manager, Credit Bureau of Kalispell, said they support this bill.

Jean Hannick, Owner, Check Rite of Billings, said they strongly support this bill.

Raul Luciani, Owner, Check Patrol of Bozeman, said they support this bill.

Kevin Wipple, Clear Check of Great Falls, said they support this bill,

Kay Farris, Check Rite of Great Falls, supported this bill.

Sara McQueen, Check Rite of Montana, said they support this bill as amended.

Rod Kline, Check Patrol of Billings, stated their support of this bill.

Jan Strickland, Check Rite of Montana, said there is wording in the new bill which will clarify many problems regarding check collecting.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. PAVLOVICH said he blamed this situation on the banks. He also asked why banks do not monitor how much money is left in an account. Consumers get charged service charges that customers are complaining about. SEN. VAN VALKENBURG said banks are increasingly sensitive to the issues which are raised. With the new advances in electronic banking, there will be a debit card in the future that people could find out instantly whether the person has sufficient money in their account. There are many businesses doing that with credit cards now.

REP. DAVID EWER asked whether, under the current law when a person pays with a check and it is returned, that is grounds under current law for immediate criminal action. SEN. VAN VALKENBURG said intent is primary. It must be shown the person acted knowingly under the criminal law to prove criminal liability. It is a matter of business practices.

REP. JACK HERRON asked if the bill could be a percentage charge instead of a certain amount. SEN. VAN VALKENBURG said there never was any consideration of putting this at a percentage. It is really to reflect what the current practice is in Montana.

REP. MILLS asked if there was any way if a person has more than one bank account there a way to authorize the bank to tap the second account. SEN. VAN VALKENBURG said he did not know the answer.

CHAIRMAN SIMON said it cost the merchant the same amount of money to go after someone who has written a \$2 check or a \$2000 check as far as the time involved and process. SEN. VAN VALKENBURG said this was essentially correct but the merchant would not be as inclined to pursue it as much.

Closing by Sponsor:

The sponsor closed.

TAPE 2, SIDE A

EXECUTIVE ACTION ON SB 246

Motion: REP. ELLIS MOVED SB 246 BE CONCURRED IN.

Discussion:

CHAIRMAN SIMON said the one saving grace the pawn brokers would have is that they can keep the merchandise in their possession and they can force redemption of the item. If the police get the item the charges are dropped. He said this may not be a cure-all.

REP. ELLIS said pressure could be placed on the person to confront the thief before the charges are dropped.

Vote: Motion carried 18-0.

EXECUTIVE ACTION ON SB 298

Motion/Vote: REP. MCKEE MOVED SB 298 BE CONCURRED IN. Motion carried 18-0.

EXECUTIVE ACTION ON SB 335

Discussion: CHAIRMAN SIMON said this bill was re-referred from the House floor.

Motion/Vote: REP. MILLS MOVED TO RECONSIDER SB 335 FROM THE HOUSE FLOOR. Motion carried to re-refer 18-0.

Motion/Vote: REP. FORBES MOVED THE ELLIOTT AMENDMENT. Motion carried to adopt the Elliott amendment 18-0.

Motion: REP. FORBES MOVED THE KOTTEL AMENDMENT.

Motion: REP. MILLS MOVED TO STRIKE THE KOTTEL AMENDMENT.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 3-14-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor

DATE 3-14-95

BILL NO. SB 298 SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Jim Frohlich	CREDIT BUREAU OF MISSOIA	X	
Daniel N. McLean	Credit Bureau of M-ssach	X	
Jeff Hoch	Collection Bus Services	X	
D Micklewright	Credit Bureau Kals.	X	
Rod Klire	check patrol of Billings Inc	X	
Raul Luciani	Check Patrol Boz	X	
Sarah McQueen	Check Rite of MT, Inc.	X	
Mike McQueen	CHECK RITE of MT, Inc.	X	
Jan A. Stueben	PS/PT Services	X	
Charles R. Brooks	MT Food Diet Assoc	X	
Jean Harich	CheckRite Bks - Helena	X	
Pat O'Malley	Clear Check - Helena	X	
Kevin R. Whipple	CLEAR CHECK - G.F.		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Brad Grifflin
Marsha Paulson

MT Retail Assoc. X
Montana Collectors Assn X
Int. Part President

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Barbara E. Haber

DATE _____

BILL NO. SB 298

SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
<u>Day Marie</u>	<u>Chickadee Great Falls</u>	☒	☐
<u>Leon Stalupp</u>	<u>MT Restaurant Assoc</u>	☒	☐

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.